**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | | |
|---|---|---|
| DIGITAL REG OF TEXAS, LLC, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | |
| | § | Civil Action No. 6:07cv467-LED |
| | § | |
| HUSTLER.COM (A/K/A LFP INTERNET GROUP, LLC), | § | |
| LFP, INC., | § | |
| MICROSOFT CORP., | § | |
| APPLE INC., | § | |
| PLAYBOY ENTERPRISES, INC., | § | **JURY TRIAL DEMANDED** |
| AUDIBLE, INC., | § | |
| SONY CORP. OF AMERICA, | § | |
| SONY CONNECT, INC., | § | |
| MACROVISION CORP., | § | |
| and | § | |
| BLOCKBUSTER INC., | § | |
| | § | |
| Defendants. | § | |

**PLAINTIFF'S ORIGINAL COMPLAINT**

Plaintiff Digital Reg of Texas, LLC ("Plaintiff" or "Digital Reg"), by and through its undersigned counsel, files this Original Complaint against Hustler.com (a/k/a LFP Internet Group, LLC), LFP, Inc., Microsoft Corp., Apple Inc., Playboy Enterprises, Inc., Audible, Inc., Sony Corp. of America, Sony Connect, Inc., Macrovision Corp., and Blockbuster Inc. (collectively "Defendants") as follows:

Dockets.Justia.com

## NATURE OF THE ACTION

1. This is a patent infringement action to stop each Defendant's infringement of Digital Reg's United States Patent No. 6,389,541 entitled "Regulating Access to Digital Content" (the "'541 patent"; a copy of which is attached hereto as Exhibit A). Digital Reg is the assignee of the '541 patent. Digital Reg seeks injunctive relief and monetary damages.

## PARTIES

2. Plaintiff Digital Reg of Texas, LLC is a limited liability company organized and existing under the laws of the State of Texas. Digital Reg maintains its principal place of business at 104 East Houston Street, Suite 165, Marshall, Texas 75670. Digital Reg is the assignee of all rights, title, and interest in and to the '541 patent, including the right to sue for infringement and recover past damages.

3. Upon information and belief, Defendant Hustler.com (a/k/a LFP Internet Group, LLC) ("Hustler") is a limited liability company organized and existing under the laws of the State of California, with its principal place of business located at 8484 Wilshire Boulevard, Suite 900, Beverly Hills, California 90211.

4. Upon information and belief, Defendant LFP, Inc. ("LFP") is the parent of Hustler, and is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 8484 Wilshire Boulevard, Suite 900, Beverly Hills, California 90211.

5. Upon information and belief, Defendant Microsoft Corp. ("Microsoft") is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at One Microsoft Way, Redmond, Washington 98052.

6. Upon information and belief, Defendant Apple Inc. (“Apple”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1 Infinite Loop, Cupertino, California 95014.

7. Upon information and belief, Defendant Playboy Enterprises, Inc. (“Playboy”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 680 North Lake Shore Drive, Chicago, Illinois 60611.

8. Upon information and belief, Defendant Audible, Inc. (“Audible”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1 Washington Park, Newark, New Jersey 07102.

9. Upon information and belief, Defendant Sony Corp. of America (“Sony Corp.”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 550 Madison Avenue, New York, New York 10022.

10. Upon information and belief, Defendant Sony Connect, Inc. (“Sony Connect”) is a subsidiary of Sony Corp., and is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 6080 Center Drive, Los Angeles, California 90045.

11. Upon information and belief, Macrovision Corp. (“Macrovision”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2830 De La Cruz Boulevard, Santa Clara, California 95050.

12. Upon information and belief, Blockbuster Inc. (“Blockbuster”) is a corporation organizing and existing under the laws of the State of Delaware, with its principal place of business located at 1201 Elm Street, Dallas, Texas 75270.

## JURISDICTION AND VENUE

13. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

14. The Court has personal jurisdiction over each Defendant because: each Defendant has minimum contacts within the State of Texas and the Eastern District of Texas; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; each Defendant has sought protection and benefit from the laws of the State of Texas; each Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's causes of action arise directly from Defendants' business contacts and other activities in the State of Texas and in the Eastern District of Texas.

15. More specifically, each Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, each Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas, and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Each Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Each Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use respective Defendant's products and services in the State of Texas and in the Eastern District of Texas.

16. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

## COUNT I – PATENT INFRINGEMENT

17. United States Patent No. 6,389,541, entitled "Regulating Access to Digital Content," was duly and legally issued by the United States Patent and Trademark Office on May 14, 2002 after full and fair examination. Digital Reg is the assignee of all rights, title, and interest in and to the '541 patent, and possesses all rights of recovery under the '541 patent, including the right to sue for infringement and recover past damages.

18. Upon information and belief, Hustler has infringed and continues to infringe the '541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating Digital Rights Management ("DRM") technology. Hustler provides such content on its interactive website, http://hustler.com. Upon information and belief, Hustler has also contributed to the infringement of the '541 patent, and/or actively induced others to infringe the '541 patent, in this district and elsewhere in the United States.

19. Upon information and belief, LFP has infringed and continues to infringe the '541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. LFP provides such content on its interactive website, http://hustler.com. Upon information and belief, LFP has also contributed to the infringement of the '541 patent, and/or actively induced others to infringe the '541 patent, in this district and elsewhere in the United States.

20. Upon information and belief, Microsoft has infringed and continues to infringe the '541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Microsoft has provided such content on its interactive website, http://music.msn.com. Microsoft further provides controlled access and play out of digital content incorporating DRM technology through its Windows Media Player. Microsoft also provides controlled access of digital content through its Windows DRM Platform. Upon information and belief, Microsoft has also contributed to the infringement of the '541 patent, and/or actively induced others to infringe the '541 patent, in this district and elsewhere in the United States.

21. Upon information and belief, Apple has infringed and continues to infringe the '541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Apple provides such content through its iTunes® Music Store and its iTunes® Wi-Fi Music Store. Apple further provides controlled access and play out of digital content incorporating DRM technology through its iTunes® Player. Apple also provides controlled access of digital content through its FairPlay Platform. Upon information and belief, Apple has also contributed to the infringement of the '541 patent, and/or actively induced others to infringe the '541 patent, in this district and elsewhere in the United States.

22. Upon information and belief, Playboy has infringed and continues to infringe the '541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Playboy provides such content on its interactive websites,

http://playboyvod.com and http://spicevod.com. Upon information and belief, Playboy has also contributed to the infringement of the ‘541 patent, and/or actively induced others to infringe the ‘541 patent, in this district and elsewhere in the United States.

23. Upon information and belief, Audible has infringed and continues to infringe the ‘541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Audible provides such content on its interactive website, http://audible.com, and through its Audible Manager. Upon information and belief, Audible has also contributed to the infringement of the ‘541 patent, and/or actively induced others to infringe the ‘541 patent, in this district and elsewhere in the United States.

24. Upon information and belief, Sony Corp. has infringed and continues to infringe the ‘541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Sony Corp. provides such content through its CONNECT™ Music Service. Sony Corp. further provides controlled access of digital content through its OpenMG Platform. Upon information and belief, Sony Corp. has also contributed to the infringement of the ‘541 patent, and/or actively induced others to infringe the ‘541 patent, in this district and elsewhere in the United States.

25. Upon information and belief, Sony Connect has infringed and continues to infringe the ‘541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Sony Connect provides such content through its CONNECT™ Music Service. Sony Connect further provides controlled access of digital content through its

OpenMG Platform. Upon information and belief, Sony Connect has also contributed to the infringement of the ‘541 patent, and/or actively induced others to infringe the ‘541 patent, in this district and elsewhere in the United States.

26. Upon information and belief, Macrovision has infringed and continues to infringe the ‘541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Macrovision provides such content on its interactive website, http://trygames.com. Macrovision further provides controlled access of digital content through its ActiveMARK™ Platform. Upon information and belief, Macrovision has also contributed to the infringement of the ‘541 patent, and/or actively induced others to infringe the ‘541 patent, in this district and elsewhere in the United States.

27. Upon information and belief, Blockbuster has infringed and continues to infringe the ‘541 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, digital content incorporating DRM technology. Blockbuster provides such content on its interactive website, http://movielink.com, and through its Movielink Manager. Upon information and belief, Blockbuster has also contributed to the infringement of the ‘541 patent, and/or actively induced others to infringe the ‘541 patent, in this district and elsewhere in the United States.

28. Each Defendant’s aforesaid activities have been without authority and/or license from Digital Reg.

29. Digital Reg is entitled to recover from the Defendants the damages sustained by Digital Reg as a result of the Defendants’ wrongful acts in an amount subject to proof at trial.

30. Upon information and belief, each Defendant's infringement of the '541 patent is willful and deliberate. Upon information and belief, each Defendant's inducement and contributory infringement of the '541 patent is willful and deliberate. As a result, Digital Reg is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

31. Defendants' infringement of Digital Reg's exclusive rights under the '541 patent will continue to damage Digital Reg, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

## JURY DEMAND

32. Plaintiff demands a trial by jury on all issues.

## PRAYER FOR RELIEF

Plaintiff Digital Reg of Texas, LLC respectfully requests the following relief:

A. An adjudication that the Defendants have infringed and continue to infringe claims of the '541 patent;

B. An award to Digital Reg of damages adequate to compensate Digital Reg for the Defendants' acts of infringement together with prejudgment interest;

C. An award of Digital Reg's enhanced damages, up to and including trebling of Digital Reg's damages pursuant to 35 U.S.C. § 284, for the Defendants' willful infringement;

D. An award of Digital Reg's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;

E. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '541 patent; and

**F.** Any further relief that this Court deems just and proper.

Respectfully submitted,

Dated: 10/05/2007

Thomas John Ward, Jr., Esq.
Texas Bar No. 00794818
E-mail: jw@jwfirm.com
**WARD & SMITH LAW FIRM**
P.O. Box 1231
Longview, Texas 75606
Telephone: (903) 757-6400
Facsimile: (903) 757-2323

**OF COUNSEL**:
Patrick J. Coughlin, Esq.
E-mail: patc@csgrr.com
Michael J. Dowd, Esq.
E-mail: miked@csgrr.com
Ray A. Mandlekar, Esq.
E-mail: rmandlekar@csgrr.com
**COUGHLIN STOIA GELLER RUDMAN ROBBINS LLP**
655 West Broadway, Suite 1900
San Diego, California 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423

John F. Ward, Esq.
E-mail: wardj@wardolivo.com
John W. Olivo, Jr., Esq.
E-mail: olivoj@wardolivo.com

David M. Hill, Esq.
E-mail: hilld@wardolivo.com
**WARD & OLIVO**
380 Madison Avenue
New York, New York 10017
Telephone: (212) 697-6262
Facsimile: (212) 972-5866

**ATTORNEYS FOR PLAINTIFF**
**DIGITAL REG OF TEXAS, LLC**